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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,378	12/03/2003	Wei Fan	YOR920030321US1	3137
48150 7590 02/20/2009 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817			EXAMINER COUGHLAN, PETER D	
			ART UNIT 2129	PAPER NUMBER
			MAIL DATE 02/20/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/725,378	Applicant(s) FAN ET AL.
Examiner PETER COUGHLAN	Art Unit 2129

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-33.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/David R Vincent/
Supervisory Patent Examiner, Art Unit 2129

Continuation of 3. NOTE: Claim 1 introduces 'retrieving a first subset of data' which is not in the original claim..

Continuation of 11. does NOT place the application in condition for allowance because: With the final Office Action prosecution is closed. Arguments have been considered but are not persuasive.

The amended claims will not be entered due to the fact they bring new elements to light which would require a new search.

The 35 USC 101 rejection stands under preemption. The claimed invention details a concept which 'could be implemented in a variety of ways.' covering unknown uses. Additionally, the claims were rejected by using signal bearing media as a storage media which was clearly stated within the 35 USC 101 rejection. Despite this rejection, the applicant amended the specification to clarify that instruction can be stored in transmission formats.

On page 16 of the applicant's arguments, 'By arbitrarily declaring all computer implemented processes as 'abstract ideas, the USPTO would clearly be impeding progress in that technology by removing the motivation for additional development.' Claim 1 states a 'method' and not a computer implemented process.'

On page 17 the applicant states 'That is the Examiner would be able to declare that an application program directed to fraud detection constitutes an abstract idea because it could be used all types of fraud, and is not limited to a single type of fraud.' Again the applicant supports the Examiner's position with paragraphs 0004 and 0006.

[0004] Modeling is a technique to learn a model from a set of given examples of the form [(x.sub.1, y.sub.1), (x.sub.2, y.sub.2), . . . , (x.sub.n, y.sub.n)]. Each example (x.sub.i, y.sub.i) is a feature vector, x.sub.i. The values in the feature vector could be either discrete, such as someone's marital status, or continuous, such as someone's age and income. Y is taken from a discrete set of class labels such as [donor, non-donor] or [fraud, non-fraud].

[0006] Inductive learning has a wide range of applications that include, for example, fraud detection, intrusion detection, charity donation, security and exchange, loan approval, animation, and car design, among many others. The applicant admits preemption.

Regarding the 35 USC 102 rejection.

Applicant argues that Chan does not teach 'incremental estimates.' There is no mention of 'incremental estimates' within claim 1. Applicant's argument is moot.

Regarding claim 2 the Examiner disagrees with the applicant. 'Ensemble model' of applicant is equivalent to 'combine the resultant base models' of Chan. (Chan, p68, C1:9 through C3:10) 'Indication of termination' of applicant is disclosed by the 'overhead threshold' of Chan. The concept of 'overhead threshold' is that it makes no sense to spend more money to find fraudulent behavior than what is being stolen. (Chan, p70, C2:6-30)

Regarding claims 3 and 4. Applicant states the references do not address 'a progressive model of the dataset.' The term 'progressive dataset' is not mentioned within the claims or the specification. Applicant's argument is moot.

According to the arguments by the applicant, 'relative to the rejection for claim 5, the natural billing cycle of the credit card transactions of two months is not reasonable related to the plain meaning of the language of the claim that clearly describes time for developing the model of the dataset.' Claim 5 states 'developing an estimated training time to complete development of said ensemble model.' There is no mention of the applicant argument within claim 5. Applicant's argument is moot.

Regarding claim 6 and 7, the Examiner disagrees with the applicant.

Claim 6.

'Dataset carries a benefit' of applicant is disclosed by the detection of 'fraud' of Chan. 'Overall accuracy' of applicant is disclosed by the results of 'combine the resultant base models by metalearning from the classifiers behavior to generate a metaclassifier' of Chan (Chan, p67 C2:1 through C3:7, p68, C1:9 through C3:10)

Claim 7

'Benefit is not equal for all said examples' of applicant is illustrated by the 'data are highly skewed' of Chan. (Chan, p67 C3:8 through p68, C1:8)

Regarding claim 10 and 11, there is no mention of 'incremental estimation' within the claims and thus applicant arguments is moot.